IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 500 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAVJIBHAI BHAGVANJIBHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

MS NIRMALA J JHALA for Appellant

MR AJ DESAI, APP for Respondent

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE M.C.PATEL

Date of decision: 18/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant - convict was the accused in Sessions Case No.118 of 1992 before the learned Sessions Judge, Rajkot who, by his judgment and order dated 30th December, 1993, convicted the appellant of the offence under Section 302 of the Indian Penal Code and sentenced him to life imprisonment and of the offence under Section 37(1) read with Section 135 of the Bombay Police Act and sentenced him to R.I. for one month.

2. The charge against the accused was that he gave knife blows on the chest of deceased Jeram Gangdas and caused his death. The incident allegedly occurred at about 4.45 in the evening on 13th October, 1992 in Bedipara Bhagirath Society, Rajkot City. The accused pleased not guilty to the charge and he was tried for the said offence.

3. The prosecution examined as many as six eye-witnesses and also two other witnesses who saw the accused armed with a knife immediately after the incident.

4. The prosecution case is to be found in the evidence of Shantaben Jivrajbhai (p.w.18). She was living in Bhagirath Society opposite Marketing Yard in Rajkot. Her husband had three brothers, deceased Jerambhai being the eldest of them. Jerambhai was living separately with her mother-in-law in New Shakti Society, which was nearby. The accused was living in their neighbourhood. According to her, their relations with the accused were not particularly strained but there used to be altercations about children. At the time of the incident, she was sitting in the 'dehli' of her house. The accused Savji came out of his house. There were no male members in the house at that time. Jerambhai was standing in the chowk. The accused looked into their house and then went to the chowk. He threw chilli powder in the eyes of Jerambhai and gave knife blows on his chest. She raised shouts. Naajbhai, Bakulbhai, Govindbhai, Kiritbhai, Rasikbhai and others came there. Jerambhai was taken in a rickshaw to the hospital and was admitted in Emergency Ward. The doctor declared him dead. According to her, they had repeatedly told Bhanuben, the wife of the accused, not to come to their house but since she kept coming, the incident had occurred. The accused is their next-door neighbour and there is only a wall between their houses.

5. In cross-examination, she said that when the

deceased was taken to the Emergency Ward, the police had come there. First, she said that she had been questioned, but then she said that she was questioned by a journalist and he was not in police dress.

6. Head Constable Bhikhalal Mangabhai (p.w.14) was on duty at the Civil Hospital at that time. He went to the emergency room where a dead body was lying. Shantaben was present. He questioned Shantaben and she told him that the accused had given knife blows to the deceased near their house in the Marketing Yard. He conveyed the information by wireless to the Control Room. The entry is at Exh.51.

7. The next eye-witness is Motiben Reyabhai (p.w.21). She was also living in the same Society. According to her, she was going to the shop to buy tea and sugar. The shop was near the place of incident. Jerambhai was standing there. The accused came from the other side and threw chilli powder into his eyes and then gave knife blows to him.

8. Padmaben Dhirajlal (p.w.22) was also living in the same Society. She was sleeping in her house at that time and on hearing shouts, she came out and saw the accused giving knife blows to Jerambhai. Rameshbhai Savsibhai (p.w.23) also lived in the same Society. He was sleeping on a cot outside his house. On hearing the shouts of Jerambhai, he ran and caught the accused from behind. While trying to save Jerambhai, he suffered an injury on his left index finger. The accused managed to escape and ran away. Govindbhai, Shantaben and Champaben came there. Govindbhai stopped a rickshaw and Jerambhai was taken to the hospital.

9. According to Dr. Dhirajlal Valjibhai Chauhan (p.w.1), he was on duty as Medical Officer in Government Hospital at Rajkot on 13th October, 1992. Ramesh Savsibhai was brought to him for treatment and he found that he had suffered an injury on the left index finger. The certificate is at Exh.14.

10. According to Bakul Ramniklal (p.w.24), he had gone to the house of his friend Ramesh Koli. When he came out of his house, Jerambhai told him that he wanted to have paan. He, therefore, went to Vijay Paan Shop. When he returned, he saw the accused giving knife blows to Jerambhai.

11. Najabhai Machhabhai (p.w.25) also happened to be there when the incident occurred. He had gone there to

remove the chairs since the Garbi was over. He also saw the accused throwing chilli powder into the eyes of the deceased and giving knife blows on the abdomen and chest.

12. Post-mortem examination was carried out by Dr. Prakash I. Mehta (p.w.3) who was the Medical Officer in Civil Hospital. He conducted the autopsy between 9.30 and 10.45 at night on 13th October, 1992. He noted the following five stab wounds in the post-mortem report (Exh.27):

(1) Left lateral chest at level of third rib, oblique, at mid clavicular line, spindle shaped, 41/2 cms long, 2 cms wide, deep inside cavity, cutting 3rd rib, subcutaneous and intramuscular hematoma, lung tissue visible from wound. Equal margin.

(2) Just above xipisternum, oblique, crossing midline, spindle shaped, 8 cms long, 4 cms wide, deep inside cavity. Right lateral part of sternum, 7th and 8th rib cut on right side. Floor of the wound shallow and margin oblique at left end.

(3) Right lower costal margin. Just lateral to sternum, oblique, 11/2 cm wide, 2 cms deep inside cavity. Margin equal.

(4) Just below costal margin on left lateral to posterior side oblique, spindle shaped 6 cms long, 3 cms wide, 2 cms deep upto muscles. Floor shallow at posterior end.

(5) Over the left lateral iliac crest. Spindle shaped oblique, 5 cms long, 21/2 cms wide, 2 cm deep. Fractured iliac crest. Anterior and upper floor shallow.

There were rib fractures. According to him, death was due to shock because of severe blood loss resulting from injuries. He said that the injuries were sufficient in the ordinary course of nature to cause death and they could have been caused by the muddamal knife which was shown to him.

13. Govind Nanjibhai (p.w.16) also lived in the same Society. According to him, while he was passing at the time of the incident, the accused came from the other side and he asked him what he had done and the accused

told him that he had finished Jerambhai. He thought that he must have given blows to Jeram with a knife. He, therefore, released him and went to the chowk where Jerambhai was lying in a bleeding condition. His wife Champaben (p.w.17) said that on hearing an uproar, her husband ran towards the chowk and she too ran after him. The accused met them with a knife in his hand. Her husband caught him. The accused said that he had finished Jerambhai. They released the accused and went to the chowk and saw Jerambhai lying in a pool of blood.

14. It appears that F.I.R. was lodged by Jivrajbhai Gangdasbhai Patel (p.w.15) who was the eldest brother but he had not seen the incident. He had been informed by one Rasikbhai that his brother had been given knife blows.

15. The learned counsel for the appellant submitted that the prosecution has failed to prove the motive of the crime. She also referred to the Station Diary entry (Exh.51) in which the incident was described as having occurred at the house. She contended that there was no reason for Motiben to go to the shop near the place of the incident when there was another shop near her house. Motiben does not know the name of the shopkeeper. The statement of the shopkeeper had also not been recorded. She submitted that there was no mention of chilli powder in the post-mortem report. She argued that according to the doctor who carried out post-mortem, rigor mortis had set in and hence, the death must have occurred at about 2 o'clock in the afternoon while according to the prosecution, the incident occurred at 5 o'clock. It was then contended that in her cross-examination, Padmaben (Exh.22) had stated that the police had taken her signature on her statement and her evidence cannot be taken into consideration.

16. Now, the prosecution evidence has already been set out hereinabove. There are as many as six eye-witnesses and there are two more witnesses before whom the accused made extra-judicial confession. The accused was arrested with the knife at 10.30 at night on the same day and the F.S.L. report (Exh.80) shows that the knife was found to have been stained with the blood of the same group as found on the clothes of the deceased. It is true that there is very weak evidence of motive but failure to prove motive is not fatal to prosecution case in the facts of the case when there is overwhelming evidence of eye-witnesses and there is no reason to reject their testimony. Similarly, absence of any mention of chilli powder in the post-mortem report

does not discredit the testimony of the eye-witnesses. Motiben may have gone to a farther shop for her own reasons. She was not asked why she had not gone to the other shop. Similarly, no question was put to the Investigating Officer whether he had taken the signature of Padmaben on her statement and there is no ground to reject her testimony on such ground. The evidence of all the eye-witnesses is consistent except for the circumstantial variety which is bound to occur when the same incident is described by a number of persons. We, therefore, see no reason to discard their testimony when they say that the accused had given the knife blows on the chest of the deceased.

17. Lastly, it was submitted that there was no pre-meditation on the part of the accused and he had no intention to kill and the offence would fall under Section 304 Part II of the Indian Penal Code. We note this contention only to reject it. As many as five stab wounds were given on a vital part. The medical evidence shows that the injuries were sufficient to cause death. It cannot be said that the injuries were accidental and not intended. The accused was clearly guilty of the offence under Section 302 of the Indian Penal Code.

18. In view of the above discussion, there is no substance in the appeal and the same is dismissed.

(N.G. Nandi, J.)

(M.C. Patel, J.)

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